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ABSTRACT

Described as a curriculum resource guide for junior and senior high school students, this booklet includes the following information: (1) reasons for serving on a jury; (2) steps involved in becoming a juror; (3) criteria for being qualified to serve as a juror; (4) responsibilities of a juror; (5) court procedures and the role of lawyers and other court personnel in a criminal and a civil trial; and (6) compensation for being a juror. A glossary of legal terms used in the booklet and brief descriptions of court personnel are included. (EB)

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CURRICULUM BULLETIN • 1978-79 SERIES • No. 4

JURY SERVICE

A Handbook for Students

U S DEPARTMENT OF HEALTH, EDUCATION & WELFARE
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FOREWORD

Trial by jury is a fundamental, constitutional right of the people. The law states that a person shall have the right to a jury selected from a "fair cross-section of the community." This basic right is abridged when otherwise intelligent people avoid jury service. Serving on a jury is not only necessary for assurance of our constitutional right to trial by jury; it also offers one of the most meaningful opportunities for us to participate directly in the process of government. Jury service can be a dramatic and significant event in one's life. Serious responsibilities and challenges rest squarely on the shoulders of everyone who serves as a juror. The accused is a real person in a real courtroom who depends on the thinking of the jurors for justice and fairness.

Jury Service: A Handbook for Students is designed to help young people recognize the importance of jury service in our system of justice, and to appreciate the personal satisfaction and educational rewards that can be gained from serving on a jury.

The bulletin was written by teachers having knowledge of the jury system who were assisted by attorneys and the five county clerks in the City of New York. As a curriculum resource, it can be used in the study of government and law in standard social studies courses in junior and senior high school, such as American History and urban studies, as well as in law-related electives. The chapters on the conduct of criminal and civil trials supplement information found in many textbooks. This booklet should also be used in special programs and learning opportunities designed for older high school students who soon may be called for jury service.

It is hoped that through studying this manual, students in our public schools will be better prepared to take their honored places in the jury box.

Arnold Webb
Executive Director

ACKNOWLEDGMENTS

This bulletin, *Jury Service: A Handbook for Students*, was prepared as a project of the Division of Educational Planning and Support, Arnold Webb, executive director.

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Joseph Feld was responsible for overall graphic design of the book. Oleg Neishtadt, student at High School of Art and Design, provided the illustrations. Thomas Vega, head of the Dissemination Unit, assisted in its production. This manuscript was edited by Alaire Mitchell.

HOW TO USE THIS MANUAL

The social studies curriculum provides several opportunities for students to learn about the fundamentals of law, and about our criminal justice process which includes the court system and the role of the juror.

Specific opportunities for incorporating the use of *Jury Service: A Handbook for Students* as a learning experience exist in several courses of study. However, this manual was especially prepared for use in the mandated American History (American Studies) course.

Grade 10: *Western Civilization and Culture* examines ancient, medieval and English roots of law and the criminal justice system, including trial by jury.

Grade 11: *American History* (American Studies) examines the growth and functioning of democratic institutions – federal, state, and local. The government theme includes study of landmark civil rights and civil liberties court cases, and the work of our courts.

Elective: *Law Studies: The Criminal Justice System* examines the United States criminal justice system.

Elective: *Problems of Democracy* offers a unit on crime and the law, which recommends a case study:

- Tracing arrest and grand jury procedures
- Outlining responsibilities of district attorneys, judges, lawyers, and jurors
- Examining protection for the accused
- Analyzing trial procedures
- Reviewing the process of appeals

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INTRODUCTION

The New York State Judiciary Law (Section 500) makes the following "Declaration of Policy" with respect to the jury system:

> It is the policy of this state that all litigants in the courts of this state entitled to trial by jury shall have the right to grand and petit juries selected at random from a fair cross-section of the community in the county or other governmental subdivision wherein the court convenes; and that all eligible citizens shall have the opportunity to serve on grand and petit juries in the courts of this state, and shall have an obligation to serve when summoned for that purpose, unless exempted, disqualified or excused.

Eighteen-year-olds in New York State can now serve as jurors and be a functioning part of the great tradition of justice under law. This guide will tell you why and how you perform this great service for your fellow citizens and your community.

Trial by jury is a right guaranteed by the United States Constitution and the various state constitutions. Its origins go back more than a thousand years.

People living together under a government developed systems of rights and corresponding duties. Because you live close to the people around you, your exercise of any right can extend only as far as the duties you owe to others will allow. Your right to swing your fist freely in the air ends at the tip of your neighbor's nose, where your duty not to hit him or her begins.

There is a continuing conflict between laws which try to define these rights and duties and the application of these laws to the people or organized societies that are in a constant state of change. Trial by jury plays a vital role in the effort to leave room in the administration of these laws for the infinite variey of human situations which find their way to court.

The contents of this booklet are not official instructions. When you are called for jury service, you will receive an authorized juror's manual.

COURT ROOMS

WHY YOU SERVE ON A JURY

Someday, YOU may have to decide the fate of someone in trouble. *For example:*

> John Doe, age 19, has been accused of selling 1½ ounces of methadone to Jane Smith. If John Doe is found guilty, the law provides a minimum sentence of 15 years . . . a maximum of life.
>
> Dr. Janice Moss, age 35, has been accused of malpractice. After a knee operation, Johnnie Frazer, age 10, was crippled for life. Johnnie's parents are suing Dr. Moss for damages totaling $500,000.

QUESTION: WHY MIGHT YOU BE INVOLVED IN SUCH A DECISION?

ANSWER: Once you become 18, whether male or female, you may be required to serve on a jury.

QUESTION: WHY DO WE HAVE JURIES?

ANSWER: Trial by jury is a basic right provided in the U.S. Constitution as a safeguard for fair treatment under law (Sixth and Seventh Amendments).

QUESTION: HOW WAS GUILT OR INNOCENCE DETERMINED BEFORE THE PRESENT SYSTEM OF TRIAL BY JURY?

ANSWER: Before the jury system was developed, guilt or innocence was determined in a variety of ways:

- Trial by oath – the accused had to take an oath that she or he was innocent and then get a specified number of people to swear that this person was truthful.
- Trial by combat – the winner was declared innocent and the loser guilty.
- Trial by ordeal – if a person survived subjection of part of her or his body to fire or boiling water without excessive injury, that person was declared to be innocent.

- Trial in secret – powerful rulers sometimes used torture in trials in secret chambers to force confessions of guilt from their enemies.

QUESTION: WHY ARE THERE "12 GOOD MEN AND TRUE" ON A JURY?

ANSWER: No one really knows why the number 12 was chosen. Some believe that those who began the jury system may have been influenced by the 12 apostles or the 12 tribes of Israel. A famous English writer once said, "I can trust 12 ordinary men, but I cannot trust one ordinary man." Many people agree with this statement because:

- 12 people (or 6 persons in a civil case) are likely to be more impartial and free from prejudice than one person.
- 12 people will provide more wisdom and experience than one person.
- 12 people represent a wide range of backgrounds and viewpoints and their judgment would provide a truer consensus than the opinion of a single individual.

QUESTION: WHAT IS THE NEW YORK STATE POLICY ON AN INDIVIDUAL'S RIGHT TO TRIAL BY JURY?

ANSWER: It is the policy of New York State that all persons engaged in lawsuits in the courts of this state are entitled to trial by jury, and shall have the right to grand and petit juries selected at random from a fair cross-section of the community in the county or other governmental subdivision wherein the court convenes.

HOW YOU BECOME A JUROR

QUESTION: WHAT IS THE NEW YORK STATE POLICY ON JURY SERVICE?

ANSWER: . . . all eligible citizens shall have the opportunity to serve on grand and petit jurles in the courts of this state, and shall have an obligation to serve when summoned for that purpose, unless exempted, disqualified or excused.

QUESTION: HOW DO YOU QUALIFY TO BE A JUROR?

ANSWER: In order to qualify as a juror a person must:

- Be a citizen of the United States, and a resident of the county.
- Be less than seventy-six and not less than eighteen years of age provided, however, that a person between seventy and seventy-six years of age shall be excused at the request of any party to the action and such request shall not constitute a preemptory challenge.
- Be in possession of his natural faculties and not incapable, by reason of mental or physical infirmity, of rendering satisfactory jury service.
- Not have been convicted of a felony.
- Be intelligent, of good character, able to read and write the English language with a degree of proficiency sufficient to fill out satisfactorily the juror qualification questionnaire, and be able to speak the English language in an understandable manner.

QUESTION: HOW DO YOU GET THE CHANCE TO EXERCISE YOUR PRIVILEGE OF SERVING ON A JURY?

ANSWER: The County Clerk, who is also the clerk of the Supreme Court for that county, provides for the names of prospective jurors to be selected at random from voter registration lists, and other available lists, such as those of utility subscribers, licensed operators of motor vehicles, registered owners of motor vehicles, state and local taxpayers,

and persons who have volunteered to serve as jurors by filing with the County Clerk their names and places of residence.

QUESTION: AREN'T THERE SOME PEOPLE WHOSE OCCUPATIONS MAKE IT VERY DIFFICULT FOR THEM TO BE ON JURIES?

ANSWER: Yes. For instance, doctors are exempt because it would be a hardship for their patients, and in some cases even dangerous to their lives, if he or she were not able to see them during the usual two-week period of jury service. Similarly, a lawyer must be available to clients, and a dentist to patients. Therefore, people practicing these professions, and some others whose work requires their presence and whose work is important to the community will be excused, on request, from jury service.

Another reason that lawyers are excused from jury service is that they would tend to have a "legal" opinion of the evidence at the trial. It is also probable that other jurors might be too greatly influenced by their opinion of the case. The purpose of the jury system is to have several opinions from different viewpoints, each given full and *equal* consideration by all the other jurors, acting as a cross section of the community.

Women are no longer exempt from jury duty.

Persons working full time in one of the following occupations are exempt from jury service:

pharmacist	police officer	member of the clergy
optometrist	firefighter	member of armed forces
podiatrist	physician	registered nurse
embalmer	dentist	practical nurse
ship's officer	psychologist	lawyers and judges

- those who live in the same household with a child or children under sixteen years of age and have the principal responsibility for the actual care and supervision of the child or children during the majority of the hours between 8 A.M. and 6 P.M. (excluding school hours)
- the sole proprietor or principal manager of a business, firm, association, or corporation employing fewer than three persons, not including the prospective juror, who is actually engaged full time in the operation of such a business as a means of livelihood

- a person seventy years of age or older

Elected and certain appointed public officials are disqualified from jury service and may not serve even should they desire to do so. Disabled persons with a doctor's certificate may be excused.

QUESTION: IF YOU HAVEN'T BEEN CALLED, CAN YOU VOLUNTEER?

ANSWER: Definitely; and you'll probably be a very good juror if you have that much interest. Inform the County Clerk of your wish to become a juror. Be sure to include your full name and address.

QUESTION: HOW ARE YOU INFORMED OF YOUR SELECTION TO BE A PROSPECTIVE JUROR?

ANSWER: A notice from the County Clerk will come in the mail directing you to appear at a particular courthouse in your borough. This notice is called a *subpoena* (pronounced "suh-peen-ah"), from the Latin expression meaning "under penalty," because the law compels your attendance to see if you are qualified and available to serve as a juror. There are legal penalties, possibly including a fine and imprisonment, for your failure to respond to this subpoena. It might seem strange that a punishment is threatened for your failure to exercise a privilege, but remember:

- without jurors, obviously there can be no trial and one of the great traditional and constitutional rights of Americans would cease to exist;
- the jury is intended to be representative of the community and to insure fair treatment for those accused of crimes or involved in disputes with others.

QUESTION: HOW DOES THE COUNTY CLERK DETERMINE YOUR QUALIFICATIONS TO BE A JUROR?

ANSWER: The County Clerk will mail to you, the prospective juror, a jury qualifications questionnaire, and a list of the disqualifications and exemptions from jury service. The questionnaire should be answered, and signed and returned to the County Clerk within ten days.

Your qualifications to be a juror will be determined by the County Clerk on the basis of information provided on the juror's qualification questionnaire and other information obtained from public agencies including those concerned with previous criminal convictions.

The questionnaire to be filled out by prospective jurors shall contain substantially the following information and shall be in such form as the county clerk may decide.

JUROR QUALIFICATION QUESTIONNAIRE

1. Name . . . . . .
2. Residence . . . . . Apt. No. . . . . Zip Code . . . . . .
3. Date of Birth . . . . . Place of Birth . . . . . .
4. Sex . . . . . Marital Status: Single . . . . Married . . . . Widowed . . . . .
5. Extent of Education: Primary . . . . . High School . . . . . College . . . . .
6. How long living at present address? . . . . . .
   In New York State? . . . . . In this country? . . . . . .
7. Give any other last names you have ever used? . . . . . .
8. Occupation . . . . . Employed at present? . . . . . .
9. Business Address . . . . . .
10. Home telephone number . . . . . Business Telephone number . . . . . .
11. Spouse's Name . . . . . Spouse's Occupation . . . . . .
12. Spouse's Address . . . . . Spouse's Telephone No. . . . . .
13. Name and age of each child residing with you . . . . . .
14. Has your spouse or any other person caring for and supervising your child or children claimed an exemption from jury service for that reason? . . . . .
    If answer is yes, give details . . . . . .
15. Are you a citizen of the United States? . . . . . If you are a naturalized citizen, when and where were you naturalized? . . . . . .
16. Did you register for the last general election? . . . . . .
    Where did you live then? . . . . . .
17. Have you ever been denied listing as a qualified juror or been stricken from any list of jurors? . . . . . .
    Where and why? . . . . . .
18. Have you ever been convicted of a crime? . . . . . .
    Where? . . . . . When? . . . . . What crime? . . . . . .
    Have any judgments been entered against you in a civil court on allegations of fraud or misconduct? . . . . . .
    If answer is yes, give details . . . . . .
19. Do you have any physical or other infirmity impairing your ability to serve as a juror? . . . . . .
    If the answer is yes, please specify . . . . . .
20. If there is a certain month during which you wish to serve, enter it in this space . . . . . .
    Please give reason . . . . . .
21. If there is a certain month during which you do not wish to serve, enter it in this space . . . . . .
    Please give reason . . . . . .

QUESTION: WHAT HAPPENS AFTER YOU FILL OUT THE QUESTIONNAIRE?

ANSWER: If your answers show that you are qualified to serve on a jury, your name will be placed on a list of persons called the jury reservoir or pool, which may contain 100,000 or more names. You and the others on the list will be called to either a civil or a criminal court for jury service at some future date.

QUESTION: WHAT CAN YOU EXPECT WHEN YOU REPORT TO THE COURTHOUSE?

ANSWER: You may be asked additional questions to try to find out whether you can read and write English; whether you keep up with the news; and whether you are mentally and emotionally fit to serve. You need only be a reasonably average citizen. One of the great strengths of the jury system is that ordinary citizens serve as jurors. People are not chosen as jurors because of wealth, education, age, or other criteria which would restrict the opportunity to serve.

In most cases, those who judge the facts of the case are in the same community as the persons whose interests are involved in a trial. Laws are often many years old and may need new interpretations. The jury can use the common sense of the layperson to apply these legal rules to new conditions and the current morality of our society. The questionnaire is the first step in determining that you are reasonably aware and able to function as a member of a jury, one who acts as a "trier of the facts."

QUESTION: WHAT CAN YOU EXPECT WHEN YOU ARE CONSIDERED QUALIFIED FOR JURY SERVICE?

ANSWER: You will go to a large jury assembly room with many other people who are also awaiting their chance to serve as jurors. Even as you wait in this room, you are serving an important function, especially in civil (noncriminal) cases. The usual civil case involves one person suing another (bringing a legal action against that person) for wrongs claimed were done to him or her that do not usually involve a violation of criminal laws.

An automobile accident, involving relatively severe personal injuries and property damages, is a common example of this type of case. The lawyers for each side try to achieve settlement of the dispute by agreeing on the amount to be paid by one party to the other, depending on who was at fault. Both sides are aware that if they do not settle the case between them before trial, and it goes to a jury for decision, the jury may award:

- an amount greater than had been offered
- an amount less than had been offered
- no money at all

With this kind of uncertainty confronting them, the attorneys regard the jury as a very important element in their discussions on settling a case. Sometimes they agree on a settlement of the case even after a jury has been chosen and sworn in, because each side sees that the other is ready to proceed with the effort and expense of a trial.

QUESTION: WHERE DO YOU GO FROM THE JURY ASSEMBLY ROOM, AND WHEN?

ANSWER: Eventually, depending mostly on the time that trials in progress take, your name will be called. In civil cases, you and the others who have been called will go to a jury impaneling room. In criminal cases, you will report to a courtroom.

QUESTION: ARE YOU ON A JURY THEN?

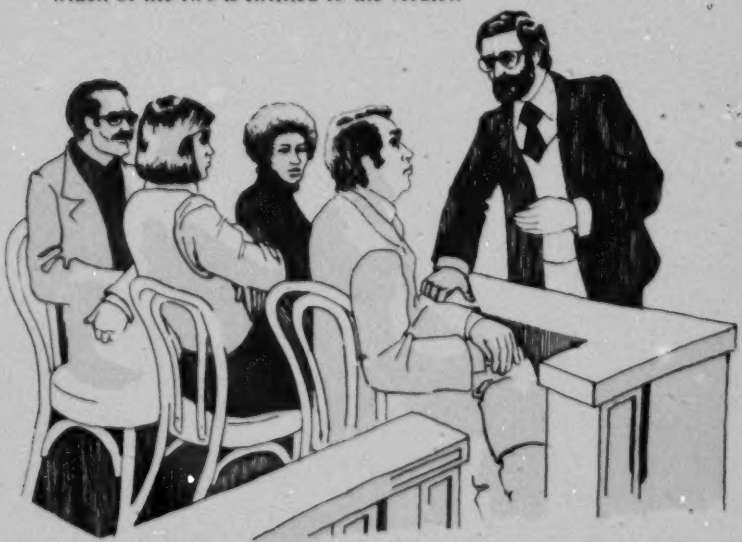
ANSWER: Not yet. Again your name will be picked by chance in a kind of lottery using the names of all the people who have reported to that room for possible jury service. More names will be picked than are required to fill the jury for the particular case, and the first 6 or 12 chosen will take their seats in the jury box, a section set aside for the jurors. Then the lawyers for both sides will question you, a process called the "voir dire" (pronounced "vwar-deer", from an old French expression meaning "to say the truth"). In criminal cases, this process takes place in the courtroom in the judge's presence. In civil cases, the questioning occurs in a separate impaneling room without the judge's presence.

QUESTION: WHY DO BOTH LAWYERS QUESTION YOU DURING THE VOIR DIRE BEFORE YOU ARE ALLOWED TO SERVE ON THE JURY?

ANSWER: Both lawyers want to make certain that persons selected as jurors are free from prejudice against their clients. In criminal cases, the judge will probably ask all the jurors if there are any obvious reasons for them not to act as jurors in the particular case, such as knowing or having any business or family relationships with any of the persons involved.

The lawyers, however, are looking for certain attitudes that are not so easy to find or even define. Possibly you may consider yourself a person of fair mind, but you really do believe that certain groups or classes are more inclined to commit a crime than others, or that men with long hair are not good drivers, or that all women should only be housewives. If the client is from one of these groups, the attorney will try, by questioning you, to find out if you have such a prejudice.

- The lawyer's job is *not* to be impartial; but to try to show the client and the client's activities in the best possible way.
- The other lawyer's job is just the opposite.
- Our system of justice is based on the fact that each lawyer will present his or her case in the best way, and the jury will decide which of the two is entitled to the verdict.



QUESTION: WHY MIGHT YOU BE DISQUALIFIED FROM A CASE?

ANSWER: In a criminal case, one of the lawyers may convince the judge that you are already prejudiced, that you have "prejudged" the case and formed an opinion even before the trial. You will then be excused by the judge from serving as a juror on that case, and will wait to be called on another. The lawyer has challenged your right to sit as a juror on this case for a reason she or he has demonstrated to the judge. You have been excused as a result of this "challenge for cause." Either side may challenge an unlimited number of jurors for cause.

A lawyer also may excuse you from serving on the case which is about to be tried *without* consulting the judge. Usually the lawyer who is trying a jury case in a court is a specialist at trial law. These lawyers, through years of experience, have developed the ability to predict with a great degree of accuracy how certain types of jurors will regard their clients' cases. They may feel that a particular juror will be prejudiced, or hard to convince, but they may not be able to state a "cause" that will be acceptable to the judge and cause her or him to excuse the juror. When you are challenged by a lawyer who asks to have you excused without indicating a cause, she or he has used a "peremptory challenge." There are a limited number of peremptory challenges available to each attorney. The number is set by law according to the kind of case which is to be tried.

Remember that in using a peremptory challenge to remove you from the jury, the attorney is not required to state the reason he or she wants you excused. Because the attorney has only a limited number of peremptory challenges, she or he will not be able continually to keep members of a particular group off the jury if the jury panel contains a full cross section of the community. This helps illustrate the importance of *everyone* being available for jury service.

QUESTION: WHAT HAPPENS WHEN YOU ARE CHALLENGED AND REMOVED FROM THE JURY?

ANSWER: You will leave the jury box and your seat will be taken by another potential juror. That person will be questioned by the attorneys, and if chosen as a juror, will remain in that seat until the full number of jurors required for that case has been accepted by both sides.

QUESTION: HOW SHOULD YOU REACT IF YOU ARE DISQUALIFIED?

ANSWER: Don't be offended or take it as a personal insult, since no one of us is completely free of some prejudice. Each of the sides in a jury trial has a right to an *impartial* jury, and the lawyers will try to have jurors who are not even slightly prejudiced against their clients. In fact, lawyers will do their best to have jurors on their case who might favor the person whom they represent. The other lawyer will try to prevent that. A challenge could even be a compliment to your fairness because the lawyer belives that your opinions cannot be swayed easily, and would rather have jurors who will not be so difficult to convince.

QUESTION: IF YOU HAVE BEEN DISQUALIFIED FROM A CASE, DOES THIS MEAN THAT YOU WILL NOT GET THE CHANCE TO SERVE ON A JURY?

ANSWER: No, because usually you report for jury service each weekday for two weeks, and you may be called again to report to a different courtroom or jury impaneling room for a voir dire examination.

QUESTION: AFTER YOUR TWO WEEKS OF JURY SERVICE, CAN YOU BE CALLED AGAIN?

ANSWER: Yes, but you may not serve again for a period of two years. Be sure to keep the certificate which will be given to you as proof of the dates you served. This will establish both your future right to serve after two years and to be excused should you be called again within the two-year period.

HOW JURORS DO THEIR JOB

A. In the Courtroom

During the progress of the trial the job of the juror in the courtroom is to listen *carefully* with an open mind, free of prejudice or prior opinion as to the merits of the case. You are there as an ordinary citizen of the community, together with the other members of the jury, using your good common-sense and judgment in trying to determine the truth and do justice.

Listen to the attorneys as they give their opening statements. What they have to say is not evidence in the case, but it will give you a kind of road map to help plot the course of the development of their respective cases during the trial. This will help you to see the relationship to the case of various materials and testimony that may be introduced as evidence for you to consider. Even though you feel there may be a lot for you to remember, don't take notes during the trial – doing so will only distract your attention from what is happening in the courtroom.

Watch, as well as listen, as each witness gives testimony. A very important part of your job is to observe the behavior and composure of each witness. Only a jury legally "sees" a witness's hesitation, or obvious discomfort at having to answer, or inability to answer a particular question. Of course, you must allow for the fact that most people are nervous as witnesses.

If the case is appealed to a higher court, none of the behavior of a witness is seen or heard by the judges ruling on the appeal. The printed record of the case, when it is appealed, contains only the words of the witness's answer. Only the jury can decide how believable is the testimony of each witness.

Jurors must force themselves to ignore facial expressions of anyone except the witness, and continue to pay the closest attention to what is being said. It is natural for people to smile or frown at testimony, according to whether they agree or disagree with it, but some people in a trial will try to influence you, the jurors, by such expressions or vocal outbursts. Ignore them.

There will be times when you will see that there are conflicts between different persons' testimony, or that some testimony seems exaggerated. You won't have to look hard for such instances, because the lawyers, as part of their job, will point them out to you. Be alert when you detect such conflicts or exaggerations, or when they have been called to your attention, because *you* must decide which testimony is more believable, or to what extent a witness may have exaggerated.

Remember that you must consider as evidence in reaching your verdict only that which has legally been introduced into the trial of the case. Rules of evidence have developed over the course of centuries of American law, including the English legal system upon which it is based. These rules are all for the purpose of guaranteeing a fair trial, with no advantage to either side. If a question is asked, the answer to which would be barred by these rules of evidence from being part of the evidence at the trial, the attorney for the other side will object. If the judge agrees with him or her, the objection is sustained, and both the question and the answer must be ignored by you, as if they had not been spoken. If the objection is overruled, then the question is permitted and the witness may answer it.

Do not let any improper testimony get by the safeguards of the rules of evidence and affect your consideration of the case. Remember that the improper question which you do *not* ignore, even after the judge instructs you to do so, can have just as great an effect on you as any answer. "When did you stop beating your wife?" doesn't need an answer to create an impression on the jury. Your mind at the trial should be like recording tape: remembering everything, but subject to rewinding and erasure of portions of the reel at the direction of the judge.

In New York City, each juror receives a juror's manual at the commencement of jury service. You should read and absorb the material in the manual and listen to and obey the judge's instructions in all cases.

B. Outside the Courtroom

Your job outside the courtroom during the course of the trial is just the opposite of your job in court, where you are supposed to listen carefully to everything. When you leave the courtroom, listen to *nothing* which has anything whatever to do with the case! Do not discuss the case with friends, members of your family, or other jurors.

Do not read any newspaper accounts of it, or even listen to any news broadcasts on radio or TV which might mention it.

Perhaps only the "sensational" aspects of the case will be mentioned at any length, and all of us find it difficult to disregard what we hear from friends, family, and the media. What they say may be true, but it will only be part of the picture. In court you are hearing and seeing all the facts that it is proper and fair for you to know before reaching a decision.

Remember that comments or statements made by persons outside of court who are not involved in the trial are not governed by the rules of evidence. The persons may not even be aware that they are trying to influence you. Only *you* (and the judge) have a responsibility to be completely fair, and *not* to form an opinion until the evidence has been presented in full.

Although it is very unusual, there are some cases where the judge considers the isolation of the jury from outside influences to be so important that she or he orders its members to be "sequestered" during the entire course of the trial. The jurors then go as a group, with court attendants, to a hotel which becomes their residence after each day in court until they have reached a verdict. Such sequestration is ordered only in cases that receive very extensive media coverage and are the subject of almost everyone's conversation. You are not likely to be involved in such a trial, but you can see why administrators of our judicial system are concerned that jurors not be exposed to any influences in reaching their decision other than those which are properly presented in court.

Some jurors, showing more enthusiasm than wisdom, have gone on their own to the scene of an alleged crime or incident to form their own opinions from an inspection of the site. Unless the entire jury is taken there at the judge's direction as part of the proceedings of the trial, don't do it! There are many circumstances about the location which may have changed from the time in question, and you will not be seeing the true picture. In any event, such an unauthorized inspection by you makes you an "unsworn witness" and could cause a "mistrial." In that event, the work of all the parties to the trial – the witnesses, lawyers, judge, jurors, and court assistants – would be wasted, and a completely new trial would have to be held.

There are other actions which can cause a mistrial. One of the most serious of these is any communication between a juror and any one of the participants in a trial. Neither in the courtroom nor outside

of it should there be any conversation or written material passing between you. This includes contacts during any recesses or adjournments for lunch. You *must* report to the judge immediately any attempt made by anyone to discuss the case with you or to try to influence your decision. Your failure to do so may result in a mistrial.

C. In the Jury Room

The jury goes to a private room in the courthouse to consider the evidence and attempts to agree on a verdict. In order to help the jury deliberate in an orderly fashion, the judge will designate as "foreman" the juror sitting in seat number one in the jury box, the seat in the front row at the right facing the courtroom. In civil cases, the jury can decide to elect a different member as foreman, if they so choose. The foreman acts as a chairperson to call on the jurors who wish to speak and, in general, helps the jury to proceed in an organized fashion.

It is very important through the entire course of the deliberations to remember the judge's "charge" to the jury, the set of instructions given you as to the law which must be applied to this case. It is possible that you may not agree with the purpose or fairness of such a law, or the way you have been instructed to apply it to the facts of the case. It is the test of good jurors that they apply the law as the judge instructs them.

Keep in mind that the jury is the finder of the facts. The judge is the interpreter of the law. The members of the jury must apply the facts to the law as the judge instructs them.

The judge's charge to the jury and the interpretation of how you should decide the case if you find certain facts to be true, can be appealed by the losing side. The court reporter is taking notes of every word the judge says to you and they will be part of the record of any appeal which will be reviewed by the higher court. You must leave it to the lawyers, if they disagree with the judge's charge, to make it the subject of an appeal. The jury should take great pride, as well as feel great responsibility, in knowing that its deliberations are secret, that no record is made of them, and that, except for some act of misconduct by a juror, its findings are ordinarily upheld on appeal.

The jury can ask the judge, after deliberations have begun, to have parts of testimony read back to them as recorded by the court reporter; that's why you shouldn't take notes during the trial. It can ask to see exhibits which have been allowed as evidence, such as a gun, an X-ray, or a written note. The judge can be asked to read again to the

jury the law which must be applied by the jury to the facts of the case. The judge can be asked for any other guidance or instruction which the jury may feel it needs.

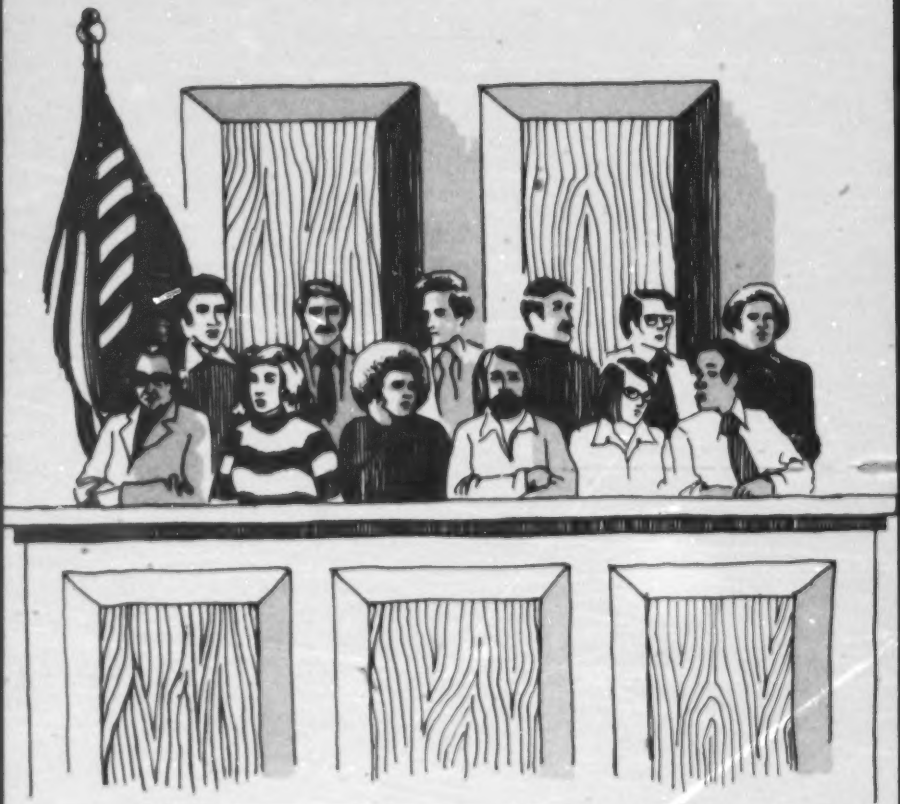
It is important for the jury to remember that members have an equal vote and are entitled to full attention and respect for their opinions. Greater age, education, wealth, or business or social position does not necessarily make people better jurors; it merely gives them a different point of view from those whose life experiences have not been the same. A young person just out of high school may have more of a "feel" or instinct about the truth of testimony given by an 18-year old than other members of the jury, some of whom could be half a century older. You will find that jurors who are much older than you will, nevertheless, give a respectful hearing to your opinion, if it is presented in a reasoned fashion.

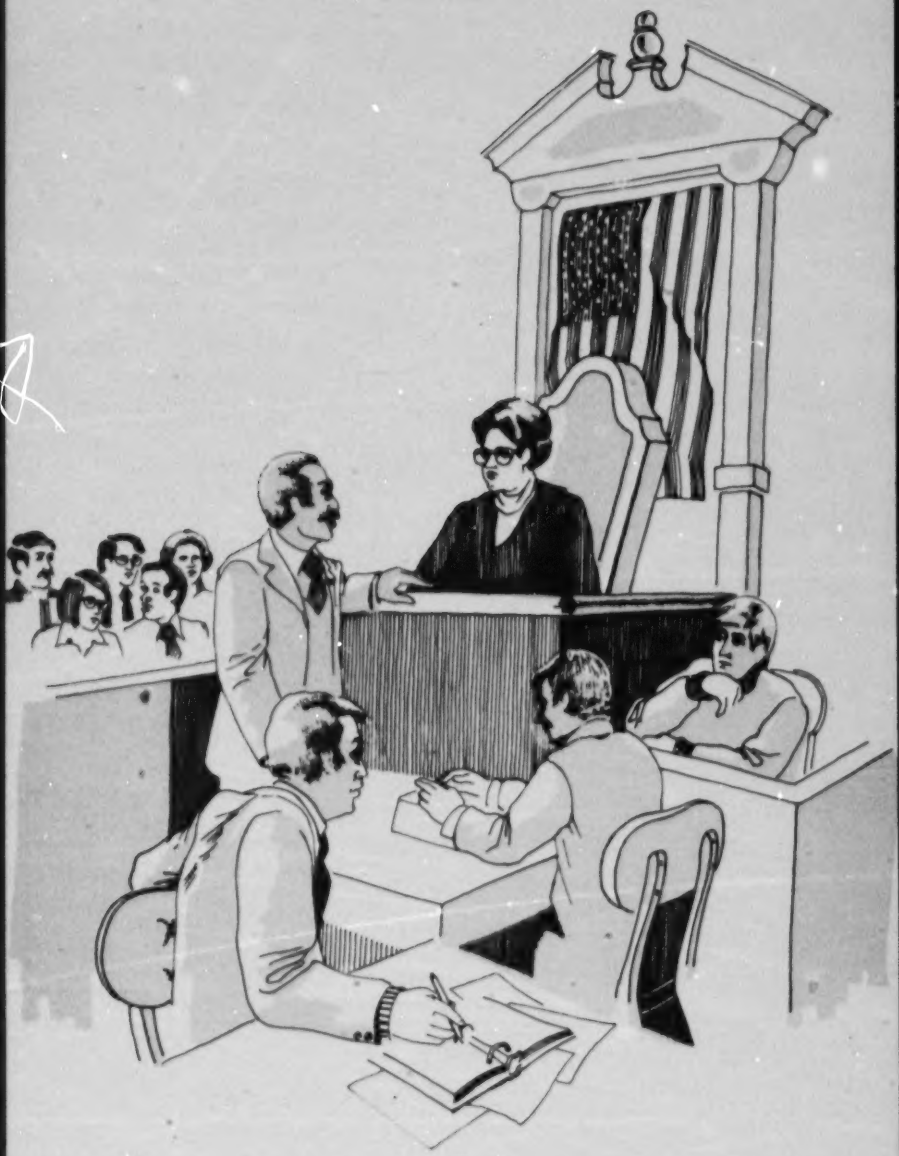
However, you must *not* yield to the temptation to side with a party to the trial who may be of the same nationality, race, religion or age, or have some other characteristic with which you identify. To do this is to destroy the jury system, and do a great discredit to yourself. "Justice is blind" does not mean that justice cannot work; it means that justice takes no notice of who or what the persons involved in a trial may be or represent. YOU are justice when you are a juror; it is a great honor and responsibility.

There may be one or more jurors who try to bully other jurors by saying such things as, "Let's get this over with quickly" or, "He's guilty for sure, so let's not waste any time talking about this." Such a juror *cannot* force you to vote the way he or she wants, any more than accompany you into the election booth and cast your vote on Election Day. Don't let such an aggressive person bowl you over. When you have formed an opinion about the case after deliberations in the jury room, stick to it unless, after more discussion, you feel that your first opinion was wrong. Then, don't be afraid to change your mind and your vote on the next balloting by the jurors. Remember that the purpose of the jury's deliberations is to have the jury *agree* on the verdict, and this may require convincing some jurors to change their minds by a reasoned and orderly discussion of the case.

The jurors may vote on the verdict any time they feel they may be in agreement or to see how close they are to agreement. If the balloting is secret, no one will be influenced by how a particular member voted, although the discussions of the jury will very likely show the opinion of each member who participates.

Perhaps the best tribute to the jury system is that given it by the professionals of the legal and judicial systems: lawyers and judges agree that juries seem to be right in their verdicts the great majority of the time. Most people seem to rise to the occasion when they become jurors; they listen carefully and vote honestly according to the evidence presented. It is this lofty tradition that you will have the opportunity to continue as you perform your jury service.





HOW A CRIMINAL TRIAL IS CONDUCTED

QUESTION: WHAT TYPES OF OFFENSES ARE TRIED IN A CRIMINAL COURT?

ANSWER: Cases in a criminal court deal with offenses causing harm to many people, only one person, or possibly no one at all, but which involve conduct that can be considered a threat to the whole society. Our whole civilization is organized on the idea of living peacefully together with respect for each other's rights to life, safety, and property. If an offense against these rights goes unpunished, others will feel they can do the same thing without fear of any penalty. The whole community is, therefore, endangered and its peaceful functioning disturbed.

- A criminal act involving possible harm to many is armed robbery of a bank, in which numerous innocent persons in the bank and pedestrians on the street could be injured, even killed.
- A mugging is an example of both robbery and assault against only one person.
- Some who drive while under the influence of alcohol may fortunately harm no one, but this conduct is a threat to anyone near and cannot be permitted by a society having many drivers and the widespread use of alcohol.

News of the conviction of a robber, mugger, or drunken driver makes many people who might consider committing such crimes think more carefully about them.

QUESTION: WHO ARE THE OPPOSING SIDES IN A CRIMINAL TRIAL?

ANSWER: The person accused of a crime is the "defendant" in a trial. The offense with which he or she is charged represents a threat to everyone because any transgression may encourage others to violate the rules of our society (break the law).

"The People of the State of New York", represented by the district attorney of the county where the offense is alleged to have taken place, are really the opponent of the defendant, and in seeking this conviction,

they are called the "prosecution." Often in court the prosecution will be referred to as "the people." The person who has complained to the police or to the district attorney about an alleged criminal act by the defendant against him or her, such as mugging, is considered a witness. Of course, testimony of the witness during the trial is of vital importance to the outcome of the case.

QUESTION: DOES THE DISTRICT ATTORNEY CONDUCT THE TRIAL FOR THE PROSECUTION?

ANSWER: Not usually. Because there are many trials each weekday in a city as large as New York, the D.A. ordinarily delegates his authority to assistant district attorneys, who try the individual cases. There is a lot of preparation involved in getting a case ready for trial, and many legal proceedings occur before the case ever goes to a trial by jury. What you see and hear as a juror is often the result of months of work by the prosecution and defense. For trials in New York City, this work also is done by several hundred assistant district attorneys.

QUESTION: DOES THE TRIAL ALWAYS TAKE PLACE IN THE COUNTY WHERE THE CRIME IS SAID TO HAVE BEEN COMMITTED?

ANSWER: No, because sometimes the crime charged against the defendant is of such a nature that it has received much publicity, often of a highly sensational character ("SNIPER GOES BERSERK, KILLS 5"). In such a situation, particularly in small communities where the matter will be discussed by everyone in town, the defense lawyer may ask that the case be tried in another community or county so that jurors will not have heard about the case or formed an opinion as to guilt or innocence before the trial. In some instances, the defendant, with the permission of the judge, would voluntarily give up her or his right to a jury trial because the lawyer felt it would be impossible to select jurors who would not be prejudiced against the defendant. The judge instead of the jury then decides the facts of the case.

QUESTION: WHY DOES THE JUDGE BEGIN A CRIMINAL TRIAL BY GIVING INSTRUCTIONS TO THE JURY?

ANSWER: Our criminal justice system is founded on the fact that individuals are presumed innocent of any crime charged against them until they are *proven* guilty beyond a reasonable doubt. The judge stresses this strongly when giving preliminary instructions to the jury. Remember that this presumption of innocence is one of the proudest

accomplishments of a democracy. No official of the government or personal enemies can bring charges against an accused and then force that person to clear himself or herself by overcoming the presumption of being guilty. Defendants do *not* have to take the witness stand to testify in their own behalf, and the judge instructs the jurors *not* to assume a defendant is guilty if the decision is made not to take the witness stand.

QUESTION: ARE THERE NOT TIMES WHEN THE DEFENDANT IS SO OBVIOUSLY GUILTY OF THE CHARGE THAT IT WOULD BE A WASTE OF TIME TO HAVE A TRIAL?

ANSWER: No. No guilt is obvious until it is established from all the evidence at the trial. Who is to say when guilt is "obvious"? Different people can form different impressions from the same evidence, which is why we have juries. Each jury utilizes the opinions of all of its members to reach a verdict, so that the possibility of error in its decision is greatly reduced.

QUESTION: WHAT IS THE PURPOSE OF THE OPENING STATEMENT BY EACH LAWYER?

ANSWER: The prosecution explains the reasons for believing that the accused person committed the crime, and sets forth the facts which it expects to prove to convince the jurors. This statement informs the jury of the nature of the case and gives it an idea of what to listen for during the course of the trial. The defense lawyers may or may not make an opening statement, but if they do, they will indicate the reasons the jury should believe the accused is innocent.

These statements are really guides to help the jury see how the bits and pieces of evidence which they will later hear and see during the course of the trial fit into the overall picture. These opening statements are *not* evidence, and they may *not* be considered by the jury in reaching its verdict. They are helpful to you in understanding what the case is all about, but you must remember that each attorney is only telling you what puts his or her side of the case in the best possible light. It is the evidence only which may be considered by you as you try to decide the facts of the case.

QUESTION: WHAT IS "EVIDENCE"?

ANSWER: Evidence may be a physical object, such as a gun in a murder case or a TV set in a burglary case. Any words, either oral or written, that the judge permits to be recorded in the case and heard, or

read, and considered by you, the jury, are evidence. There are strict rules for the introduction of evidence. They are closely followed by the judge in order to insure a fair trial for all parties – the people and the defendant in criminal cases and the plaintiff and defendant in civil cases.

Controversy between the lawyers and the judge as to the "admissibility" of evidence (that is, whether certain objects or words can become part of the evidence to be considered by the jury) are often very important parts of the trial. In fact, there is often much that occurs in the progress of a case before it goes to a jury trial that concerns the attempt of one side or the other (usually the defense) to suppress evidence. An example of evidence that might be suppressed would be heroin found in the apartment of the defendant which police obtained by breaking into the apartment without a search warrant. (Note that here is an example of a defendant who is "obviously" guilty, but if this illegal search and seizure were permitted to be the basis of charges against the defendant, then no one would be safe at home against such governmental action.)

QUESTION: IN WHAT ORDER ARE WITNESSES CALLED?

ANSWER: The prosecution questions its witnesses first to present evidence to prove the guilt of the accused. These same witnesses may be cross-examined by the defense attorney to discredit their testimony. To discredit a witness's testimony does not mean necessarily that the person is shown to be a liar. What is demonstrated is the possibility or error in the testimony, or poor judgment, guess, or prejudice, all of which cause the testimony to be less unfavorable to the client whose attorney is conducting the cross-examination.

If witnesses testified to an assault they say they saw the defendant commit upon another person, the defense attorney might ask such questions as:

- How much light was there at the time of the incident?
- How good is their eyesight?
- Could the noise of traffic on the street have interfered with hearing any words that were spoken between the accused and the person allegedly assaulted?
- Did they witness the entire confrontation between the two persons?
- Did they notice whether the alleged victim was holding a knife?

The fact is that most witnesses tell the truth as best they know it, but the jury must be made aware of the possibilities of inaccuracies in

their statements. A witness may be reexamined by both attorneys until both sides have no further questions to ask.

After all the prosecution witnesses have been examined (given their sworn testimony in response to the questions of the attorneys, or the judge, who may ask a question of a witness at any time), the assistant district attorney who is trying the case for the prosecution will state "The People rest their case." The witnesses for the accused are then questioned by the defense attorney, followed by the same procedure of cross-examination and reexamination if the attorneys wish it. Objections to questions or testimony may be made at any time by either side, and are ruled upon by the judge before the examination of that witness is allowed to continue. Sometimes the subject matter of the objection is allowed to remain as evidence if the attorney can show, by later questions and testimony, why it is proper to admit it as evidence.

QUESTION: HOW CAN THE JURORS KNOW WHEN A WITNESS IS LYING?

ANSWER: In the unusual situation of the witness who is telling a deliberate lie, the attorney for the opposing side ordinarily will be aware that the testimony is not true, or it will be called to her or his attention. The focus of the questions will become keener so that the witness will have difficulty in maintaining his or her story. The collective common sense of the jury is surprisingly effective in detecting a lie, particularly when the attorney for the opposing side questions the witness carefully. This is the wonder and strength of the jury system: that six or twelve average citizens, without special training, or experience in the law, can be so proficient in using their own experience and intuition in deciding whether testimony is to be believed. As a juror you will find your senses just a little bit sharper as you watch and listen carefully to a witness whom you think may not be telling the truth. Decisions regarding truth probably will be both the most difficult and most interesting you will have to make as you perform your jury service.

QUESTION: WHY DO THE LAWYERS PRESENT A FINAL SUMMATION TO THE JURY?

ANSWER: Each side wants to win the votes of the jurors. The prosecuting attorney will review all the evidence against the accused. The defense attorney will stress all the evidence which supports the innocence of the accused.

QUESTION: WHY DOES THE JUDGE INSTRUCT THE JURY BEFORE SENDING THEM TO THE JURY ROOM?

ANSWER: The judge must state that the accused is considered to be *innocent unless proven guilty beyond a reasonable doubt.* If there is no reasonable doubt, it is the jury's duty to convict. But if a reasonable doubt does exist, then the jury must find the defendant not guilty.

QUESTION: HOW MANY JURORS MUST AGREE TO REACH A VERDICT?

ANSWER: *All* members of the jury must agree that the defendant is either guilty or not guilty. If one or more jurors refuse to accept the decision of the other jurors after lengthy discussion, no verdict can be reached. This is known as a "hung jury."

QUESTION: HOW DOES A "HUNG JURY" AFFECT THE ACCUSED?

ANSWER: Usually a new trial is ordered. Another 12 people are selected for the jury. The accused must go through a new trial. Sometimes the charges are dropped and the accused, if he or she has been in custody before and during the trial, is set free. The district attorney's staff will drop the charges if they are not likely to obtain a conviction after another trial.

HOW A CIVIL TRIAL IS CONDUCTED

QUESTION: WHICH DISPUTES GO TO A CIVIL COURT?

ANSWER: Cases in a civil court deal with disagreements between two or more people. These acts may be unfair but are not considered crimes. A person who feels wronged may sue in civil court to require someone to carry out the terms of a contract or may sue to obtain money for "damages." Damages are compensation for money lost, or spent. Damages are also awarded to compensate for physical or mental harm suffered because of the wrongful act of the defendant. In civil cases, the jury consists of six people. As a member of a civil trial jury, you would judge whether injury was done to a person, property, or business, and in what amount. Civil cases often involve accidents and contracts.

QUESTION: WHAT DO THE TERMS PLAINTIFF AND DEFENDANT MEAN?

ANSWER: The *plaintiff* is the person who brings the suit (makes the complaint). The person who is sued is the *defendant.* For example:

A dentist makes a set of false teeth which break within a week and refuses to replace or repair them without charge. The patient sues the dentist in civil court. The *patient* is the *plaintiff* (the one who sues). The *dentist* is the *defendant* (the one who is sued).

QUESTION: HOW DOES THE TRIAL BEGIN ONCE THE JURY IS SWORN IN?

ANSWER: Each lawyer usually makes an opening statement to the jury stressing the facts she or he hopes to prove. The purpose of these opening statements, as in the criminal trial, is to help the jury understand the evidence which will follow. These opening statements cannot be regarded as evidence by the jury in reaching its verdict.

QUESTION: IN WHAT ORDER ARE WITNESSES CALLED?

ANSWER: The first witnesses called are those who will support the position of the plaintiff. After each witness is questioned by the

plaintiff's attorney, the defendant's attorney may cross-examine. Then the defense attorney's witnesses are called. Each witness for the defendant may be cross-examined by the plaintiff's attorney.

QUESTION: WHY DOES EACH ATTORNEY SUM UP AFTER THE WITNESSES HAVE TESTIFIED?

ANSWER: Each attorney is trying to make clear to the jury the proof in favor of her or his client. At this time, each attorney emphasizes the important points which favor her or his client.

QUESTION: ARE THE LAWYERS' SUMMATIONS PART OF THE EVIDENCE?

ANSWER: No! Only the sworn testimony of each witness and any physical objects shown in the courtroom are *the facts* to be evaluated by the jury as evidence.

QUESTION: WHAT DOES THE JUDGE'S "CHARGE" TO THE JURY MEAN?

ANSWER: When the judge "charges" the jury, she or he does the following:

- explains the questions to be decided by the jury
- explains the position taken by both sides
- explains the meaning of the law to help the jury decide whether the plaintiff or the defendant is right.

QUESTION: ISN'T THE PROCEDURE FOR TRIAL OF A CIVIL CASE VERY SIMILAR TO THAT OF A CRIMINAL CASE?

ANSWER: Yes, but there are some very important differences.

- A civil jury in New York State now will always have six jurors, of whom only five must agree for a verdict to be reached.
- The jury in a criminal felony case has twelve members, and *all* must agree that the prosecution has proved its case *beyond a reasonable doubt* in order to find the defendant guilty. Misdemeanors are tried by a jury of six. The verdict must also be unanimous and the jurors must be convinced that guilt has been proven beyond a reasonable doubt.

In a civil case, the burden of proof is on the plaintiff. The plaintiff need not prove a case beyond a reasonable doubt, as the prosecution must in a criminal case, but merely by a fair preponderance of the evidence.

THE DOUBLE BONUS

QUESTION: DO JURORS RECEIVE ANYTHING IN ADDITION TO DERIVING PRIDE AND SATISFACTION FROM THEIR JURY SERVICE?

ANSWER: Yes, $12 a day plus $1.00 carfare. If you live in a two-fare zone, you can be reimbursed for the extra carfare upon request. You will receive a check in the mail sometime after you finish serving. By far the greater part of your reward for a job well done will be the great satisfaction that comes from providing justice for other people. You will learn to trust other people's ability to provide justice for you. How much it can mean to you can best be told in the words of someone who has served as a juror.

> "For the first time in my life, I was in a position to decide the fate of another human being. As I sat in the jury box, I was nervous because of the great responsibility being entrusted to me. But then a great feeling of pride came over me. I realized that important people had placed confidence in my ability to make a wise, honest, fair decision."

GLOSSARY

ADMISSIBLE EVIDENCE	that data (spoken words, objects, etc.,) which is allowed in the courtroom
ALLEGE	to declare a statement without proof
APPEAL	a proceeding whereby a case is brought from a lower to a higher court for a rehearing
CIVIL CASE	a lawsuit to enforce a right or gain payment for a wrong done to a person or party
CRIMINAL CASE	a lawsuit by government to try to find the accused guilty of committing a crime
DEFENDANT	person against whom a legal action is brought
HUNG JURY	a jury whose members cannot agree unanimously
OFFENSE	a misdeed against the law
PEREMPTORY CHALLENGE	a provision that a lawyer may excuse the juror from serving on the jury without stating reasons
PLAINTIFF	the party who files a complaint and brings a legal action against another party
PRESUMPTION	a suggestion of a fact that is not certainly known
PROSECUTION	a criminal suit against the offender
SEQUESTERED	separation of the jury from others
SUBPOENA	a court order to appear in court to give testimony
TESTIMONY	evidence given by a witness under oath
VERDICT	decision made by jury during their deliberations
VOIR DIRE	questioning of possible jurors to decide if they are acceptable for deciding the case
WITNESS	person who has knowledge of facts having to do with a case

COURT PERSONNEL

JUDGE a person appointed or elected to hear and decide questions of law and to make certain fair procedures are used.

COUNTY CLERK an officer elected by the city and performing all the duties prescribed by law

COURT STENOGRAPHER a person who records all spoken remarks in the courtroom

BAILIFF an officer of the court who has charge of the accused person while in the courtroom

PETITION OFFICER an official of the court who makes formal written requests

BONDS(MAN) a licensed person who writes bonds for bail, etc.

FORE(MAN) a member of a jury who acts as a spokesperson

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